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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT SEATTLE

11 Reyes LUNA,

12 Plaintiff,

13 v.

14 UNITED STATES,

15 Defendant.

CASE NO. 2:20-CV-1152-RSL

**STIPULATED
PROTECTIVE ORDER**

16
17 1. PURPOSES AND LIMITATIONS

18 Discovery in this action is likely to involve production of confidential, proprietary, or
19 private information for which special protection may be warranted. Accordingly, the parties hereby
20 stipulate to and petition the court to enter the following Stipulated Protective Order. The parties
21 acknowledge that this Order is consistent with LCR 26(c). It does not confer blanket protection on
22 all disclosures or responses to discovery, the protection it affords from public disclosure and use
23 extends only to the limited information or items that are entitled to confidential treatment under
24 the applicable legal principles, and it does not presumptively entitle parties to file confidential
25 information under seal.
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1 2. “CONFIDENTIAL” MATERIAL

2 “Confidential” material shall include the following documents and tangible things
3 produced or otherwise exchanged:

- 4 a. Personal identifying information and other non-public personal information (e.g.,
5 address or telephone number and health, financial, or employment records) of the
6 producing party or the producing party’s family members or employees;
- 7 b. Documents contained in Reyes Luna’s Immigration File, as well as other U.S.
8 Department of Homeland Security documents and/or other records or documents
9 that reference Mr. Luna’s immigration status;
- 10 c. Federal, state, or local law enforcement records relating to Reyes Luna;
- 11 d. Records, communications, or information belonging to the United States
12 Department of Homeland Security that have not been made available to the general
13 public; or
- 14 e. Any information that is protected or restricted from disclosure by state or federal
15 statute or regulation, but which the Court may order produced, such as information
16 protected by the Privacy Act, 5 U.S.C. § 552a.

17 3. SCOPE

18 The protections conferred by this Order cover not only confidential material (as defined
19 above), but also (1) any information copied or extracted from confidential material; (2) all copies,
20 excerpts, summaries, or compilations of confidential material; and (3) any testimony,
21 conversations, or presentations by parties or their counsel that might reveal confidential material.

22 However, the protections conferred by this Order do not cover information that is in the
23 public domain or becomes part of the public domain through trial or otherwise.

24 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

25 4.1 Basic Principles. A receiving party may use confidential material that is disclosed
26 or produced by another party or by a non-party in connection with this case only for prosecuting,

1 defending, or attempting to settle this litigation. It shall not be disseminated outside the confines
2 of this case, nor shall it be included in any pleading, record, or document that is not filed under
3 seal with the Court or redacted in accordance with applicable law. Confidential material may be
4 disclosed only to the categories of persons and under the conditions described in this Order.
5 Confidential material must be stored and maintained by a receiving party at a location and in a
6 secure manner that ensures that access is limited to the persons authorized under this Order.

7 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
8 by the court or permitted in writing by the designating party, a receiving party may disclose any
9 confidential material only to:

10 (a) the receiving party’s counsel of record in this action, as well as employees
11 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

12 (b) the officers, directors, and employees (including in house counsel) of the
13 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
14 agree that a particular document or material produced is for Attorney’s Eyes Only and is so
15 designated;

16 (c) experts and consultants to whom disclosure is reasonably necessary for this
17 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

18 (d) the court, court personnel, and court reporters and their staff;

19 (e) copy or imaging services retained by counsel to assist in the duplication of
20 confidential material, provided that counsel for the party retaining the copy or imaging service
21 instructs the service not to disclose any confidential material to third parties and to immediately
22 return all originals and copies of any confidential material;

23 (f) during their depositions or during the process of deposition preparation,
24 witnesses in the action to whom disclosure is reasonably necessary and who have signed the
25 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the
26 designating party or ordered by the court. Pages of transcribed deposition testimony or exhibits to

1 depositions that reveal confidential material must be separately bound by the court reporter and
2 may not be disclosed to anyone except as permitted under this Order;

3 (g) the author or recipient of a document containing the information or a
4 custodian or other person who otherwise possessed or knew the information;

5 4.3 Filing Confidential Material. Before filing confidential material or discussing or
6 referencing such material in court filings, the filing party shall confer with the designating party,
7 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will
8 remove the confidential designation, whether the document can be redacted, or whether a motion
9 to seal or stipulation and proposed order is warranted. Where practical, a party shall attempt to
10 confer with the opposing party at least seven days prior to the intended filing date. During the meet
11 and confer process, the designating party must identify the basis for sealing the specific
12 confidential information at issue, and the filing party shall include this basis in its motion to seal,
13 along with any objection to sealing the information at issue. Local Civil Rule 5(g) sets forth the
14 procedures that must be followed and the standards that will be applied when a party seeks
15 permission from the court to file material under seal. A party who seeks to maintain the
16 confidentiality of its information must satisfy the requirements of Local Civil Rule 5(g)(3)(B),
17 even if it is not the party filing the motion to seal. Failure to satisfy this requirement will result in
18 the motion to seal being denied, in accordance with the strong presumption of public access to the
19 Court's files.

20 5. DESIGNATING PROTECTED MATERIAL

21 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
22 or non-party that designates information or items for protection under this Order must take care to
23 limit any such designation to specific material that qualifies under the appropriate standards. The
24 designating party must designate for protection only those parts of material, documents, items, or
25 oral or written communications that qualify, so that other portions of the material, documents,
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1 items, or communications for which protection is not warranted are not swept unjustifiably within
2 the ambit of this Order.

3 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
4 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
5 unnecessarily encumber or delay the case development process or to impose unnecessary expenses
6 and burdens on other parties) expose the designating party to sanctions.

7 If it comes to a designating party's attention that information or items that it designated for
8 protection do not qualify for protection, the designating party must promptly notify all other parties
9 that it is withdrawing the mistaken designation.

10 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
11 (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
12 disclosure or discovery material that qualifies for protection under this Order must be clearly so
13 designated before or when the material is disclosed or produced.

14 (a) Information in documentary form: (*e.g.*, paper or electronic documents and
15 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
16 the designating party must affix the word "CONFIDENTIAL" to each page that contains
17 confidential material. If only a portion or portions of the material on a page qualifies for protection,
18 the producing party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate
19 markings in the margins).

20 (b) Testimony given in deposition or in other pretrial proceedings: the parties
21 and any participating non-parties must identify on the record, during the deposition or other pretrial
22 proceeding, all protected testimony, without prejudice to their right to so designate other testimony
23 after reviewing the transcript. Any party or non-party may, within thirty days after receiving the
24 transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or
25 exhibits thereto, as confidential. If a party or non-party desires to protect confidential information
26 at trial, the issue should be addressed during the pre-trial conference.

1 (c) Other tangible items: the producing party must affix in a prominent place
2 on the exterior of the container or containers in which the information or item is stored the word
3 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,
4 the producing party, to the extent practicable, shall identify the protected portion(s).

5 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
6 designate qualified information or items does not, standing alone, waive the designating party’s
7 right to secure protection under this Order for such material. Upon timely correction of a
8 designation, the receiving party must make reasonable efforts to ensure that the material is treated
9 in accordance with the provisions of this Order.

10 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

11 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
12 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality
13 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
14 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
15 challenge a confidentiality designation by electing not to mount a challenge promptly after the
16 original designation is disclosed.

17 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
18 regarding confidential designations without court involvement. Any motion regarding confidential
19 designations or for a protective order must include a certification, in the motion or in a declaration
20 or affidavit, that the movant has engaged in a good faith meet and confer conference with other
21 affected parties in an effort to resolve the dispute without court action. The certification must list
22 the date, manner, and participants to the conference. A good faith effort to confer requires a face-
23 to-face meeting or a telephone conference.

24 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
25 intervention, the designating party may file and serve a motion to retain confidentiality under Local
26 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of

persuasion in any such motion shall be on the designating party. Frivolous challenges, and those made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other parties) may expose the challenging party to sanctions. All parties shall continue to maintain the material in question as confidential until the court rules on the challenge.

7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party must:

(a) promptly notify the designating party in writing and include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Order. Such notification shall include a copy of this Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose confidential material may be affected.

8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential material to any person or in any circumstance not authorized under this Order, the receiving party must immediately (a) notify in writing the designating party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

1 When a producing party gives notice to receiving parties that certain inadvertently
2 produced material is subject to a claim of privilege or other protection, the obligations of the
3 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
4 is not intended to modify whatever procedure may be established in an e-discovery order or
5 agreement that provides for production without prior privilege review. The parties agree to the
6 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

7 10. NON TERMINATION AND RETURN OF DOCUMENTS

8 Within 60 days after the termination of this action, including all appeals, each receiving
9 party must return all confidential material to the producing party, including all copies, extracts and
10 summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

11 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
12 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
13 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work
14 product, even if such materials contain confidential material.

15 The confidentiality obligations imposed by this Order shall remain in effect until a court
16 orders otherwise.

17 PURSUANT TO STIPULATION, IT IS SO ORDERED

18 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
19 documents in this proceeding shall not, for the purposes of this proceeding or any other federal or
20 state proceeding, constitute a waiver by the producing party of any privilege applicable to those
21 documents, including the attorney-client privilege, attorney work-product protection, or any other
22 privilege or protection recognized by law.

23 Dated this 23rd day of December, 2020.

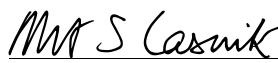
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25 
26 Robert S. Lasnik
United States District Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective Order that was
issued by the United States District Court for the Western District of Washington on [date] in the
case of _____ **[insert formal name of the case and the number and initials
assigned to it by the court]**. I agree to comply with and to be bound by all the terms of this
Stipulated Protective Order and I understand and acknowledge that failure to so comply could
expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will
not disclose in any manner any information or item that is subject to this Stipulated Protective
Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective
Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____